

**REPORT - PLANNING COMMISSION MEETING
October 27, 2005**

Project Name and Number: Dusterberry Townhomes (PLN2005-00232)

Applicant: The Riding Group

Proposal: To consider approval of a 41-unit multi-family residential development involving (a) Site Plan and Architectural Approval; (b), Vesting Tentative Tract Map 7666; (c), Preliminary Grading Plan; and, (d), Private Street.

Recommended Action: Approve, based on findings and subject to conditions.

Location: 37010 Dusterberry Way (adjacent to Main U.S. Post Office)

Assessor Parcel Number(s): Portion of 501-0455-022-08 (new APN pending)

Area: 1.92 acres

Owner: Riding Group

Agent of Applicant: Kendall Riding, The Riding Group

Consultant(s): KTGy, Architect
Lowney Associates, Environmental and Geotechnical
Charles W. Davidson Co., Civil Engineer
Wilson, Ihrig & Associates, City-selected Noise Consultant
Van Dorn Abed, Landscape Architect

Environmental Review: A Mitigated Negative Declaration has been previously prepared and circulated for this project.

Existing General Plan: Medium Density Residential, 18-23 du/ac

Existing Specific Plan: Centerville Specific Plan (CSPC)—Subarea 6

Existing Zoning: R-3-23 (CSPC)

Existing Land Use: Vacant

Public Hearing Notice: A total of 205 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Lassen Street, Holly Street Thornton Avenue, Hansen Avenue, Baine Ave, among others. The notices to owners and occupants were mailed on October 14, 2005. A Public Hearing Notice was delivered to The Argus on October 10, 2005, to be published by October 13, 2005.

Executive Summary: The Planning Commission is being asked to consider Site Plan and Architectural Approval, a Vesting Tentative Tract Map 7666, Preliminary Grading Plan and Private Street, for the development of a 41-unit multi-family residential condominium on the north corner of Dusterberry Way and Hansen Avenue. In July 2005, on recommendation of the Planning Commission, the City Council approved a General Plan Amendment, Centerville Specific Plan Amendment and Rezoning of the project site to facilitate development of the site with housing. Staff believes that the proposed project meets the City's goals and objectives in creating a well-designed, infill multi-family housing development. Staff is recommending approval of the project, based on the findings and conditions.

Background and Previous Actions: Based on old aerial photographs from 1939 to 1965, the use of the site appears to have been agricultural, cultivated with an orchard. No structures of any kind were known to have existed on the site, and the site remains undeveloped. Presently, a perimeter cyclone fence secures the site.

In June 2005, the Planning Commission recommended a General Plan Amendment to change the land use designation of the 1.92-acre project site from Community Commercial Center to Medium Density Residential, 18-23 dwelling units per acre; an amendment to the Centerville Specific Plan to allow a Medium Density Residential use in Subarea 6; and a Rezoning of the site from C-C (CSPC), Community Commercial (Centerville Specific Plan Overlay), to R-3-23 (CSPC), Multi-family Residence District (Centerville Specific Plan Overlay). In July 2005, the City Council unanimously approved the Planning Commission's recommendation, adopting an Ordinance to rezone the site and Resolutions amending the General Plan and Centerville Specific Plan.

Project Description: The applicant, The Riding Group, is requesting Site Plan and Architectural Approval (SPAA) and approval of a Vesting Tentative Tract Map (VTTM), Preliminary Grading Plan (PGP), and Private Street (PS) for the development of 41 for sale condominium units with associated parking and landscaping on a vacant parcel. The proposed project development is summarized, as follows:

1. Dwelling Units. Eight multi-family structures in a Craftsman-style design with a building composition of 6-, 5-, and 4-units per structure. The proposed structures are approximately 37 feet in height from the existing grade. Three floor plans are proposed: Plan 1 is 1,188 SF on a single living level and contains 2 bedroom, 2 bath (alternative floor plan is slightly larger at 1,397 SF); Plan 2 is 1,629 SF on a single living level and contains 2 bedrooms, 2.5 baths (alternative floor area is slightly smaller at 1,452 SF); and, Plan 3 is 1,532 SF on two living levels and contains 3 bedrooms, 2.5 baths. A total of 41 units are proposed on the project site.
2. Off-street Parking. A total of 103 parking spaces are proposed: 50 side-by-side covered spaces, 32 tandem covered spaces, and 21 uncovered parking spaces for guests.
3. Open Space. Each dwelling unit is provided with either a private open space balcony or patio. A total of thirty-two, 70 SF balconies and nine, 140 SF patios (for the larger units) are proposed. Approximately 1,650 SF of common open space is proposed.
4. Landscaping. A variety of trees, shrubs, flowering vines and groundcover are proposed. In addition, new large canopy street trees will be installed (replacing the existing Privets) to further enhance the streetscape appearance on Dusterberry Way and Hansen Avenue.
5. Onsite Amenities. A courtyard, which serves as a social zone in the common open space area, is proposed with trellises and arbors, durable picnic tables, low seat walls and a barbeque.
6. Circulation/Site Access. The applicant proposes to develop a new private street that would be served by two points of access: one new driveway will be installed on Dusterberry Way; a second driveway will be installed on Hansen Avenue.

In addition, while the applicant indicates that the project conforms to several of the standards and policies of the Multi-family, R-3 District, some variations from these standards are also proposed. An analysis under "Zoning Regulations" describes how the project conforms to, or varies from, the R-3 District standards.

PROJECT ANALYSIS:

General Plan Conformance: The existing General Plan land use designation, and density range, for the project site is Medium Density Residential, 18-23 dwelling units per acre (du/ac). The required minimum density of the project—in this case, 20.5 du/ac—must be at the midpoint of the density range. A minimum of 40 dwelling units must thus be established on the 1.92-acre project site (e.g., 20.5 du/ac X 1.92 ac = 39.3 du, rounded up to 40 du). The proposed project containing 41 units of housing is consistent with this land use designation, as well as several goals, policies and objectives of the General Plan discussed below.

Housing Goals

Goals H2 and H3: The proposed project is compatible with these two residential goals, which identifies "High quality and well-designed new housing of all types throughout the city" (H2); and "Housing affordable and appropriate for a

variety of Fremont households at all economic levels throughout the city consistent with the Hill Area Initiative of 2002" (H3). The conversion of this site from a vacant lot to residential land use is specifically encouraged in the City's land use policies in the General Plan Land Use Chapter. Staff believes that the proposed project on this 1.92-acre site presents a great opportunity for the development of additional new housing in the Centerville Planning Area. The proposed project elements, including project density (21 du/ac), building form, design and scale, are not only appropriate for the development of the site, but are also consistent with the intent and specifications of the guidelines adopted for the R-3 District and Centerville Specific Plan. The project will also provide fifteen percent of all the units made available at affordable housing cost (or below market rate).

Land Use Goals

Land Use Goal 1.9: The proposed project is compatible with this land use goal which states, "To achieve a variety of housing types, the City has designated locations where moderate and higher density development is appropriate". Criteria for the location of higher density housing include access to transit, proximity to commercial areas, and proximity to a collector or arterial street. The proposed project is located in proximity to Centerville Train Station (with Altamont Commuter Express service) and the Centerville historic retail district. Additionally, the proposed project would be appropriate in that it would allow development of additional housing in Subarea 6 of the Centerville Specific Plan, which furthers the goals of providing housing in proximity to the Centerville Train Station and retail district in light of the City's goal of creating a pedestrian-oriented community in Centerville.

Land Use Policy LU 1.12: The proposed project is compatible with this land use policy which states, "To the maximum extent feasible, play areas and open spaces shall be located to avoid conflict between residents attempting to reach these facilities and vehicular traffic". The project is designed to incorporate a variety of private patios and balconies with direct access from individual units. A common open space courtyard area, which includes patio tables and a barbeque, is proposed in an appropriate location that can be reached by residents via paseo connections, thereby avoiding conflict with vehicular traffic that would occur within the private street area.

Land Use Policy LU 1.13 and 1.22: The proposed project is compatible with this land use policy which states, "Buildings shall be designed to provide for maximum feasible visual and auditory privacy for each unit through the use of site design, open space, landscaping and appropriate building materials. Multi-family housing units shall be developed with consideration given to the relationship to adjacent development." The proposed siting of the buildings and units within them are consistent with this land use policy in that the design of each unit has been located and orientated, including private patios and balconies, in the manner that maximize visual and auditory privacy through a variety of mechanisms (e.g., inclusion of patios and balconies, variations in floor plans, window placement, etc.).

In its review of the project, staff has concluded the proposed project is consistent with the existing General Plan land use designation and Housing and Land Use Policies.

Centerville Specific Plan: The project site is located in the Centerville Specific Plan Overlay, and is thus subject to the Centerville Specific Plan (CSPC) policies and regulations which guide future development in the Centerville area. The CSPC area consists of approximately 680 acres of the larger Centerville Planning Area. The project site is identified as "Subarea 6" in the CSPC, which includes the U.S. Post Office, Immanuel Presbyterian Church, MacDonald's and other retail stores on Thornton Avenue.

With the recent July 2005 Specific Plan Amendment, Subarea 6 is now categorized as a commercial and residential area. The proposed development provides a new housing opportunity consistent with the goals in adjacent Subareas 4, 5, and 7. These areas were identified as a major opportunity for redevelopment in Centerville with residential development, and a neighborhood park. In addition, the project site is located just outside of the "five minute walking distance" periphery of the Centerville Train Station and historic retail district of Subarea 1. For these reasons, staff finds that the proposed project is consistent with the Centerville Specific Plan's goal and policies, as it is in accordance with area-wide goals of providing new housing opportunities.

The Specific Plan also includes streetscape guidelines, which includes an illustration of Dusterberry Way showing conical shaped street trees (30 feet on-center) with a 90-foot right-of-way (ROW). The streetscape design guidelines also include

a diagram showing street light concepts and describes that the City has the opportunity to control and coordinate the improvements because they are located in the ROW. The guidelines also note that the street lighting improvements are dependent on a funding source, which to date, with the exception of the existing heritage lighting installed on Fremont Boulevard in the historic retail district (Subarea 1), has not been identified. While the existing street trees (Privets) are recommended to be replaced with new Maple trees (see Landscaping section), staff believes that the applicant should not be required to install new street lighting standards because most property along Dusterberry Way has been redeveloped, and the City is not likely to effectuate a unified streetscape. In lieu, staff recommends that the applicant be required to work with staff during the Development Organization review process to install additional amenities on the site for the residents or to further enhance the overall quality of the project (Condition C-12).

Proposed Zoning Conformance: The proposed project site is zoned R-3-23 (CSPC), Multi-family Residence District (Centerville Specific Plan Overlay). Development on the project site is required to adhere R-3 District's standards and guidelines, as well as with the "Community Design Guidelines for Residential Development" provided in the Centerville Specific Plan. The table below represents lot and siting requirements, which can be modified through the Site Plan and Architectural Approval (SPPA) process. A section-by-section analysis that highlights the project's conformity to, or variation from, key-zoning standards follows.

R-3-23 Zoning Lot & Siting Standards for Project Site	
Maximum Building Height	52 feet
Minimum Lot Size	6,000 square feet
Minimum Lot Width	60 feet
Street Frontage	35 feet
Front and Street Side Setback	20 feet
Interior Side and Rear Setbacks	10 feet
Lot Coverage	50 percent
Minimum Common Open Space Area	500 SF for up to 5 units, plus 50 SF for each additional unit; one dimension at least 15 feet
Minimum Private Open Space Area	Balconies: Min. 60 SF, least interior dimension of 6 feet. Patios: Min. 100 SF, least interior dimension of 10 feet.

Building Height: The building structures proposed are approximately 37 feet in height, which is within the allowable building height for structures in the District on properties that are not within 50 feet of properties designated for Low Density Residential use (ten units per acre or less).

Building Setbacks/Coverage: The front setbacks of the proposed buildings are less than the general standard of 20 feet. To promote a more pedestrian-oriented environment and neighborhood setting with front doors oriented towards the streets and building facades well articulated, the front yard setbacks for the proposed buildings (i.e., Buildings 1 and 2) with frontage on Dusterberry Way average 15 feet, while the buildings (i.e., Buildings 2, 4, 6, and 8) with frontage on Hansen Avenue are proposed with a front yard setback of 10 feet. Staff believes that the proximity of the site from the core area of Centerville's historic retail district (Subarea 1) and Train Station, as well as the availability of on-street parking on Hansen Avenue and Dusterberry Way, warrants a reduction of the building setbacks to foster a more lively and active setting for the residents.

Private and Common Open Space: Each dwelling unit is provided with either a private open space balcony or patio that exceeds the minimum area and interior dimensions specified in the table. In compliance with these standards, a total of thirty-two, 70 SF balconies and nine, 140 SF patios (for the larger units) are proposed. While the individual private open space areas are adequately proposed and designed, the common open space area is not. The proposed common open space area is insufficient in size and should be enlarged and redesigned to be more useful. Based on the proposed number of units (41), a minimum common open space area of 2,000 SF is required, while approximately 1,650 SF of open space is proposed. Staff recommends that the two, single parking stalls (one van accessible) proposed adjacent to the

common open space area, or courtyard, be eliminated and relocated (Condition C-9). If a revision to the site plan results in the loss of one or possibly two parking spaces, it is the opinion of staff that the benefit of a larger, more well-designed common open space area for the residents of the new neighborhood outweighs the loss of a few parking spaces when the proposed parking in general is adequate (see "Parking" analysis below). Staff finds that such a modification is warranted, as vehicular traffic adjacent to the common open space area is reduced and the parking of vehicles adjacent to the common open space area is avoided.

Parking: The City of Fremont parking standards require 1 covered parking space for each two or more bedroom unit for resident parking, plus 0.5 uncovered spaces per unit for residents, plus 0.5 uncovered spaces per unit designated for guest parking only. Because 41 dwelling units with 2 or 3 bedrooms are proposed, the total off-street parking requirement for this project is 83 parking spaces: 62 spaces for occupant parking and 21 spaces for guest parking.

The proposed site plan shows a total of 103 parking spaces:

Covered Occupant Parking (garages):	50 side-by-side spaces 32 tandem spaces
Uncovered Guest Parking:	15 standard spaces (1 van accessible) <u>6 compact spaces</u> 103 spaces

Although the applicant proposed 20 spaces more than required, the parking spaces as proposed do not technically meet general parking requirements as it relates to occupant and guest space distribution as noted below:

First, in the proposed development 25 units are provided with 2-car garages (50 side-by-side spaces), while the remaining 16 units are provided with 2-car tandem garages (32 front-to-back spaces). Theoretically, tandem parking can provide 2 spaces front-to-back; however, the City has generally counted tandem parking as one space. As a result, while those 16 units are provided with 2-car tandem spaces, the spaces technically count as one space per unit.

Second, the project as proposed provides 21 guest parking spaces in conformance with the 21 guest parking spaces required. However, one space flanking the northwest side of the proposed driveway on Dusterberry Avenue will have to be eliminated, as it is too close to the street right-of-way (15 feet minimum setback required). In addition, staff recommends the elimination of the van accessible stall and a second stall adjacent to the common open space area to create a larger and more usable open space area for the future residents. Because of these modifications (and relocation of the van accessible space), up to two spaces may be lost. As a result, the guest parking may be technically short of the minimum requirement.

Staff believes that while the project does not technically meet the City's general parking standards, sufficient off-street (and on-street) parking is available. Under the parking provisions of Section 8-22003(a)(2)(d) of the Zoning Ordinance (Article 20), the Planning Commission may reduce the parking requirement for a particular project if it finds that there is sufficient off-street parking to meet the needs of the neighborhood and when it makes one of four specified findings. Staff finds that three specific findings [(i), (ii) and (iv)] can be made, as follows:

- i. Due to the use's proximity to alternative transportation infrastructure and service, including but not limited to BART, Amtrak, and other passenger rail services, bus service, or similar, the use is likely to require a lower level of parking than is required by similar projects not proximate to alternative transportation because residents will have viable transportation alternatives available.

Comment: The site is in proximity to Centerville Train Station (0.3 miles) and in direct proximity to an AC Transit bus stop (Line 218, at Dusterberry Way and Thornton Avenue).

- ii. Due to the use's proximity to amenities, and/or due to the desire to create a more pedestrian oriented environment in and around the project site, a reduction in required parking will further the goal of enhancing

and strengthening the neighborhood, and, furthermore, that residents will have access to amenities such as shopping, entertainment, and employment without necessitating the use of automobiles.

Comment: The project site is in close proximity to the Centerville historic retail district. Furthermore, with development of the future mixed-use project on Fremont Boulevard—the "Centerville Market Place"—additional amenities will become available.

...

- iv. Due to the availability of on-street parking, the guest parking requirement for the project will be lower than a development where adequate on-street parking is not provided. This finding shall only be used to lower the guest parking requirement, and not the resident parking requirement.

Comment: There is on-street parking on Dusterberry Way on both sides, excluding 120 feet at the project frontage adjacent to the Dusterberry/Hansen intersection for safety reasons, and on both sides of Hansen Avenue. While staff understands that the on-street parking on Hansen Avenue is used by the "Country Club Apartments" and on occasion (weekends) by the Immanuel Presbyterian Church and New Grace Baptist Church, parking along Dusterberry Way, northwest of the intersection, is infrequently used, particularly the on-street parking on the opposite side of Post Office, Dusterberry Way's west side. Approximately 16 on-street parking spaces would be available adjacent to the project site's frontage and at least 45 on-street spaces on Dusterberry Way, between Thornton Avenue and the railroad tracks.

Inclusionary Zoning: Future development on the site would be required to meet the City's Inclusionary zoning requirements through the inclusion of at least 15 percent of all residential units of any proposed residential project as Below Market Rate (BMR) units. A total of 6 BMR units are required, as conditioned, for the 41 unit for-sale project (Condition A-5).

DESIGN ANALYSIS:

Architecture: The project is designed to be unique but yet contain design attributes that protect and reinforce the qualities of the existing Centerville neighborhood. The project architecture utilizes elements from the California Craftsman Bungalow, an architectural style that was developed in Centerville over a period stretching from the 1850's to the present day. This approach aims to embrace a particular architectural style reflective of the Centerville area in general.

Staff believes that the design and quality of the project is consistent for the neighborhood setting and will enhance the appearance of the surroundings. The architectural design for the buildings appropriately uses elements from the older Craftsman buildings in the neighborhood. The architect proposes two color treatment schemes for the buildings. For example, in Scheme 1, the main façade treatment consists of stucco painted in "Latte" or mild cream color; siding is treated in a "Steady Brown" or brown color; board in batten in a "Kilim" or beige color; and, doors are treated in darker "Rock Bottom" or dark bronze color, while the window trim in a "Moderate" white color. The structures' roof profiles are combination gables, topped with dark brownish concrete shake tiles. The structures' design also incorporates several architectural elements, including vertical wood brackets, corbels, outlookers, railings and porch posts, overall consistent with the design theme. Scheme 2, although slightly different in color tones, is complimentary to Scheme 1.

Notwithstanding the overall design quality of the project, staff believes that some refinements, which include refining architectural details and exploring the possibility of a visually distinctive element at the corner on Building 2, should be considered. Staff recommends that these refinements be resolved during the Development Organization review process (Condition D-1).

Site Planning: The proposed site is currently vacant but contains low-lying grass, shrubs, trees and some barren land. The proposed project site is surrounded by the Main Post Office to the northwest; Immanuel Presbyterian Church (4333 Hansen Ave.) to the northeast; New Grace Baptist Church to the southeast; single-family residential homes to the southwest (across Dusterberry Way); and, a multifamily development, Country Club Apartments to the south. The surrounding land use designations, which all include the Centerville Specific Plan Overlay (CSPC) designation, are: C-C,

Community Commercial Center to the northwest (U.S. Post Office and retail); C-O, Administrative Office to the northeast, Low Density Residential (5-7 du/ac) to the southwest and southeast; and Medium Density Residential (15-18 dwelling units per acre) to the south. Street improvements, including street trees (Privets), curb and gutter, were previously installed.

The proposed site design is in a traditional townhouse-style layout with living units above garages that are tucked underneath the units. Access to the enclosed garages would be from a new private street that is configured in a loop design with two points of access from the neighboring streets. A total of 41 units in eight main structures are proposed, each containing 4, 5 or 6 living units. The main structures are three stories in height (37') with a combination of stacked single-level and two-level living units over enclosed parking. The proposed structures are designed to be oriented towards the street with:

- Front doors facing the street on Dusterberry Way and Hansen Avenue;
- Front porches used to reflect the rhythm of a single-family residential area, an approach sensitive to the existing character of single family homes on the east and west sides of the development;
- Front yard areas that provide an appropriate transition between the public sidewalk and private porches with access from front doors on the streets and enhanced paseo for internal units; and,
- Parking generally screened by landscaping and locations at the rear (away from the public streets) avoids the unsightly appearance of garage door facades and uncovered guest parking.

Staff supports the proposed site design and finds that it is compatible with the surrounding development.

Landscaping: A tree survey report prepared by HortScience identified 19 trees representing two species: 7 California Black Walnuts (*Juglans hindsii*) on the project site; and, 12 Privet (*Ligustrum lucidum*) street trees within the existing public right-of-way adjacent to the project site. While the onsite Walnuts appear to be good health, the overall structure of these trees are poor. The Walnut trees were previously reduced to stumps, resulting in the present appearance of larger shrubs caused by sprouting from the stumps (or suckers). The applicant proposes to remove the 7 Walnuts on the site and install new onsite trees as discussed below. In addition, staff proposes the replacement of the 12 Privet street trees surrounding the site within the public right-of-way. While these street trees are mature in appearance and in good health, they are no longer recognized as a desirable street tree species in Fremont due to Maintenance problems. Staff recommends that the Privet street trees be replaced with new 24-inch box 'Red Sunset' Maple trees (*Acer rubrum*) to enhance and make the streetscape appearance more vibrant (Condition E-2).

The landscape plan is acceptable. Within the development are a variety of shrubs and groundcover, and trees in the location of the parking area, paseos and common open space areas. Ample foundation planting has been provided around the main structures. Enhanced paving is used at private entry walkways and at street interfaces; arbors and trellises at paseo terminuses; special paving, outdoor seating patio, overhead arbor and flowering vines and accent shrubs at the private street terminus; and a colorful flowering planting at the proposed corner sign wall. A hardy species of Red Maple (*Acer rubrum*) consistent with the Centerville Specific Plan will replace the Privets as street trees. (Condition E-2).

A common open space 'courtyard' is located on the northeast side of the proposed site. While staff believes this area is insufficient in size, the location is appropriate and has potential be increased in size. This area includes picnic tables, low seat walls, trellises and a barbeque. Staff recommends that this area be enlarged (through elimination of the proposed single van accessible parking stall), creating space that can accommodate additional amenities, whether for passive or active recreation as previously mentioned (Condition C-9).

Lighting/Fencing: Although the applicant has not submitted a conceptual lighting plan, staff believes that an appropriate lighting plan for the development could be developed during the Development Organization review process (i.e., building permit review phase) without compromise to the quality of the proposed project. A lighting plan for shared open spaces and the private street that provides light from a variety of sources (e.g. pedestrian-scale bollard pathway lighting, appropriately-scaled street light standards) is recommended. The lighting plan will be reviewed to match the lighting intensity and quality to the use for which it is intended, i.e., lighting proposed for the pedestrian paseos will be

substantially different from the required lighting of the private street. In addition, lighting which shines directly into dwelling units or is overly intense and bright will be avoided.

The design of walls and fences, including the monument wall at the corner, will be reviewed for compatibility with the project architecture. A pre-cast concrete wall will be required between the proposed development and Post Office. The wall treatment and color will be subject to review during the Development Organization process, and will be treated with graffiti-resistant paint (Condition C-1). Vines will be planted against the wall to further soften its appearance (Condition E-5). The design of this wall will incorporate the ledge stone trim used on the structures and will be reviewed and approved during the Development Organization process. The wood fence ('good neighbor fence on plan') proposed on the north side adjacent to the zero-lot line church building should be eliminated. Staff recommends that metal trellises be installed on the north side to screen the Church wall, subject to staff approval during the D.O. process (Condition C-1). All fence and wall heights will be reviewed for compliance with the Zoning Ordinance requirements (Condition C-2).

Circulation/Access: Pedestrian and vehicle access to the project site is from the existing public streets, Dusterberry Way and Hansen Avenue. For both public streets, street improvements, including ten-foot wide sidewalks with street tree wells, were completed as part of a local improvement district (LID). The existing sidewalk and gutter is in disrepair due to the effect of the existing street trees and the age of the existing improvements. The project shall replace all existing curb, gutter, and sidewalk along the project frontage. The project proposes construction of one driveway on Dusterberry and one driveway on Hansen. Several sidewalk connections are proposed for access to individual townhouses and to the common pedestrian walkway system throughout the site.

On-site vehicle circulation is provided by a private vehicle access way, which is a type of private street used for condominium and townhouse developments. Article 21.3 of the Zoning Ordinance, Special Provisions Applying to Miscellaneous Uses, requires all condominium projects conform to the provisions of Article 20 (parking code) and the development policy for private vehicle access ways (FMC 8-22135(3)(a)).

The development policy for private vehicle access ways adopted by City Council, establishes guidelines for developments that use PVAWs. Due to the design of the project and size/shape of the project site, the following PVAW principal is not being met with this project:

- PVAW Policy #15: A walkway connection is to be provided from the private vehicle access ways to the main pedestrian pathway system. A 3.5 foot sidewalk shall be provided on both sides of the private vehicle access way.

Analysis: The size of the project site and the design of the units restrict the amount of available area for pedestrian facilities. All of the units are designed to have vehicles entering from the street side and pedestrians entering on other sides of the townhouses. Because of the building design, pedestrian pathways are provided from the front doors to either the public sidewalk or to the on-site pathway system.

Several recent townhouse and condominium projects have been approved without sidewalks on both sides of the private vehicle access way, because the front door of the units are not located on the same side of the building as the garage door. In this project, pedestrian connections are provided to each unit. The applicant is requesting deviation from the policy requiring sidewalks along the private vehicle access ways as of the Site Plan and Architectural Review application.

At previous public hearings, some individuals and residents indicated concern over the added traffic and safety and the need for traffic signals at the intersection of Dusterberry Way and Hansen Avenue. The intersection of Dusterberry/Hansen has never been on the Signal Priority List. The existing average daily traffic (ADT), on Dusterberry is about 10,000 vehicles, which is low for a four-lane roadway. The existing ADT on Hansen is about 1,500 vehicles, which is below average for a two-lane roadway. Weekend traffic for the churches adds to side street volume, but at a time when there is very low through street volume.

The proposed project (41 units of housing) will only add an ADT of about 390 vehicles to both Dusterberry Way and Hansen Avenue. With one driveway on each street, the development would increase traffic on Dusterberry by 200 vehicles per day or about 2 percent, and on Hansen by another 200 vehicles per day, or about thirteen percent. The

City's records show that there were four accidents correctable by traffic signals in the last five years. This accident history is not unusually high and by itself does not result in a high ranking for traffic signal need.

In summary, anytime drivers or pedestrians cross a four-lane thoroughfare there is a potential for accidents due to driver error. The intersection volume on both the thoroughfare and side street is below many intersections throughout the City that are on the Signal Priority List and not yet funded.

Grading & Topography: The project site is predominantly flat and currently undeveloped, except for a few existing trees. On-site grading for the project includes installation of retaining walls around all of the buildings. The retaining walls are not required for slope control, but instead are used to comply with building code requirements for 2-story buildings. The project civil engineer estimates total grading to be a balanced 3,840 cubic yards (1,920 cubic yards each of cut and fill, including shrinkage). Because the estimated grading quantities exceed 1,000 cubic yards, a preliminary grading plan application has been submitted with the tentative map application.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will be required to comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board. Based on the plans, a bioswale is proposed adjacent to the uncovered parking stalls on the northwest side of the site to treat post-construction stormwater runoff. In addition, an underground stormwater treatment unit will be installed.

ENVIRONMENTAL ANALYSIS: An Initial Study and Mitigated Negative Declaration was prepared for this project and approved in July 2005. The environmental analysis identified concerns regarding potential impacts to cultural resources, hydrology/water quality, noise, air quality, and geology/soils. The Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures are included as conditions of approval for the project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

A finding was proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. The Mitigated Negative Declaration included several mitigation measures which are incorporated in this project, including, limits on hours of construction, erosion control, mitigation of noise impacts, among others.

APPLICABLE FEES:

Development Impact Fees: The project is subject to Citywide Development Impact Fees. These fees include fire protection, capital facilities, traffic impact, park facilities and park dedication in-lieu fees. These fees shall be calculated at the fee rates in effect at the time of building permit issuance (Condition F-1).

Centerville Specific Plan Fee: This project is located within Subarea 6 of the Centerville Specific Plan and is subject to fees related to the cost of preparing the Centerville Specific Plan. The plan fee in this subarea is currently \$175.00 per acre to be paid at the time of building permit issuance.

ENCLOSURES:

- Exhibit "A" (Project Site, Architectural, Conceptual Landscape and Drainage Plans)
- Exhibit "B" (Vesting Tentative Tract Map 7666)
- Exhibit "C" (Preliminary Grading Plan and Private Street)
- Mitigated Negative Declaration and Mitigation Monitoring Program

PROJECT EXHIBITS:

Exhibit "A" (Project Site, Architectural, Conceptual Landscape and Drainage Plans)
Exhibit "B" (Vesting Tentative Tract Map)
Exhibit "C" (Preliminary Grading Plan and Private Street)
Exhibit "D" (Color and Material Sample Board)

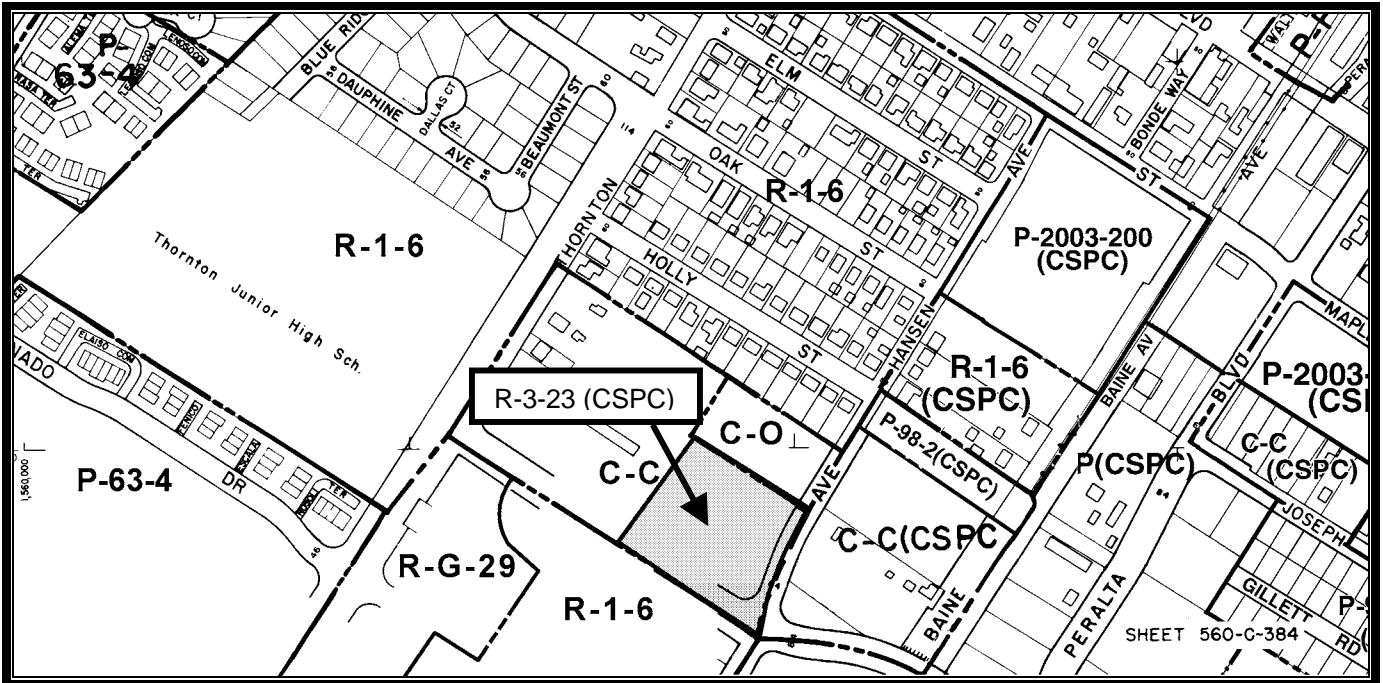
PROPOSED PROJECT CONDITION EXHIBITS:

Exhibit 1 (Findings and Conditions for Site Plan and Architectural Approval—General Project Conditions)
Exhibit 2 (Findings and Conditions for Vesting Tentative Tract Map 7666)
Exhibit 3 (Findings and Conditions for Preliminary Grading Plan and Private Street)

Recommended Actions:

1. Hold public hearing.
2. Find the previous initial study conducted for the project evaluated the potential impacts that could cause an adverse effect, either individually or cumulatively, on wildlife resources, and concluded that the implementation of approved mitigation measures would reduce all identified impacts to a level of less than significant. Therefore, because the proposed project has not change (i.e., same number of dwelling units proposed on the 1.92-acre site) find that there is no evidence the project would have any potential for adverse effect on wildlife resources.
3. Find that the previously adopted Mitigated Negative Declaration and Mitigated Monitoring Program for the project are still valid and that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment and further finding that this action reflects the independent judgment of the City of Fremont.
4. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan and Centerville Specific Plan. These provisions include the designations, goals and policies set forth in the General Plan and Centerville Specific Plan as enumerated within the staff report and Finding Exhibits adopted/recommended herewith.
5. Find that the proposed project as shown in Exhibit "A" is in conformance with the standards and polices of the R-3 zoning district, and that based on the Site Plan and Architectural Approval process conducted, the exceptions granted to the general standards of the district are warranted for the reasons mentioned in the staff report.
6. Find Vesting Tentative Tract Map 7666 shown on Exhibit "B", Preliminary Grading Plan shown and Private Street shown on Exhibit "C" to be in conformance with the relevant provisions contained in the City's General Plan and standards of the Fremont Municipal Code.
7. Approve Exhibit "A" (Finding, Site Plan and Architectural Approval), based on findings and conditions in Exhibit "1".
8. Approve Exhibit "B" (Tentative Tract Map 7666), based on findings and conditions in Exhibit "2".
9. Approve Exhibit "C" (Preliminary Grading Plan and Private Street), based on findings and conditions in Exhibit "3".
10. Approve Exhibit "D" (Color and Material Sample Board), based on conditions in Exhibit "1".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

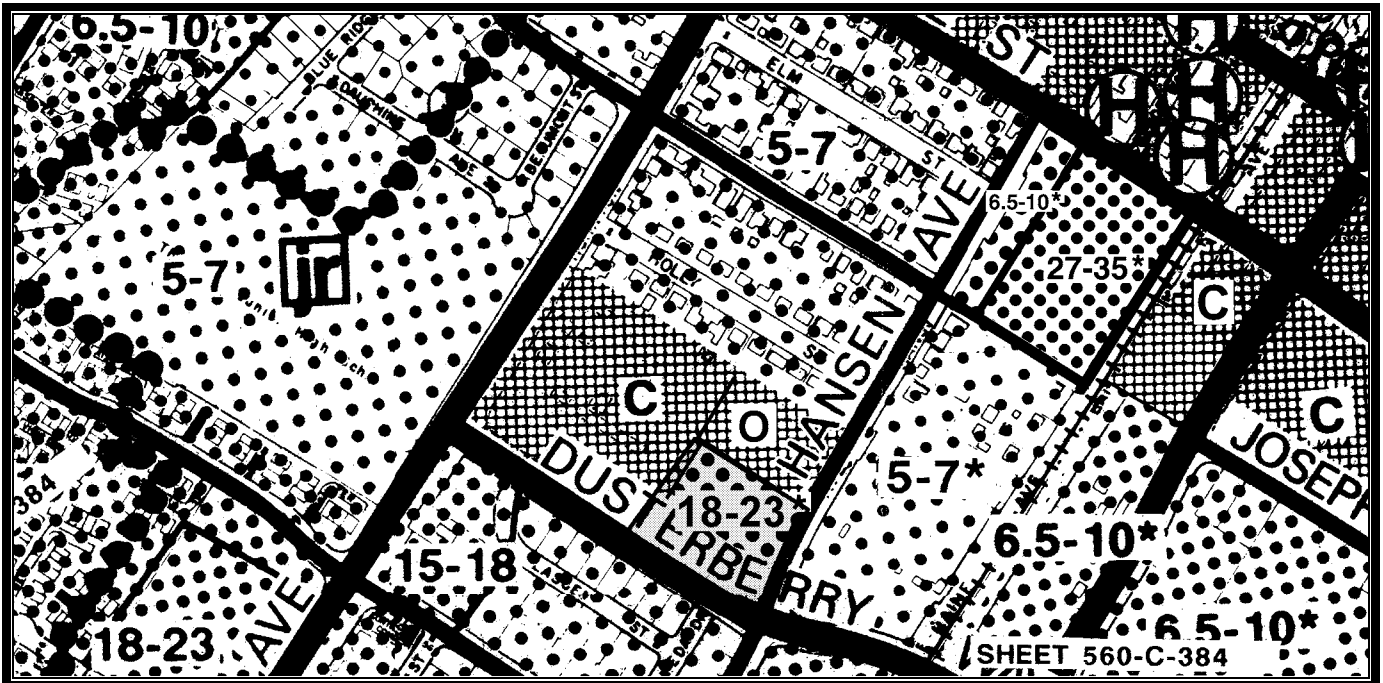


Exhibit "1"
PLN2005-00232
(Finding, Site Plan and Architectural Approval)
Dusterberry Townhomes at 37010 Dusterberry Way (Portion of 501-0455-022-08)
Planning Commission Hearing October 27, 2005

FINDINGS:

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated October 27, 2005, incorporated hereby.

1. Find that the previously adopted Mitigated Negative Declaration and Mitigated Monitoring Program for the project are still valid and that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment and further finding that this action reflects the independent judgment of the City of Fremont.
2. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Housing and Land Use Chapters as enumerated within the staff report.
3. Find that the proposed project is in conformance with the standards and policies of the R-3 zoning district, and that based on the Site Plan and Architectural Approval process conducted, the exceptions granted to the general standards of the district (i.e., front setback reductions) are warranted for the reasons mentioned in the staff report herein.
4. Find that due to the project site's proximity to alternative transportation and amenities (e.g., retail, food stores, restaurants, etc.), desire to create a more pedestrian oriented environment in and around the project site, and availability of on and off-site parking, a minor deviation (loss of no more than 2 guest parking spaces) is warranted.

General Conditions (Must be satisfied on an on-going basis—Pre-, during-, and post-construction.)

- A-1 The project shall conform with Exhibit "A" (Site Plan, Floor Plans, Architectural Elevations, Conceptual Landscape Plan and Drainage Plan) and "D" (Color and Material Boards), and all conditions of approval set forth herein.
- A-2 The proposed project shall also comply with all companion conditions of approval relating to the Vesting Tentative Tract Map (Exhibit 2), Preliminary Grading Plan and Private Street (Exhibit 3). All plans shall be designed to be in compliance with applicable federal, state and local building and fire code requirements.
- A-3 Plans shall be submitted to the Development Organization (D.O.) for review and approval to insure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code.
- A-4 Minor modifications to the approved building designs and siting, elevations and colors may be made, subject to review and approval of the Planning Director or his/her designee if such modifications are in keeping with the architectural statement of the original approval. However, the Planning Director shall retain the authority to determine the level of review required (i.e., depending on the severity of the modification, the project may be referred to the Planning Commission for review and approval).
- A-5 Pursuant to Article 21.7 [Inclusionary Housing] of the Fremont Municipal Code, the Property Owner(s) shall enter into a BMR Master Developer Agreement with the City to provide at least 15% of total number of residential units made available at affordable housing costs within the for-sale development.

A total of 6 units in the 41-unit "Dusterberry Townhomes" project shall be available for participation in a below market rate (BMR) affordable housing program, subject to the review and approval of the Office of Housing and Redevelopment. The BMR Master Developer Agreement shall run with the land, made part of the project's conditions of approval and shall be recorded on the property titles of each parcel designated for the BMR sales program.

The BMR Master Developer Agreement shall include the following provisions:

- BMR units must be affordable to families earning no greater than 110% or below of the county median income as defined by the United States Department of Housing and Urban Development in effect at the time of sale;
- Units shall only be available to eligible first time homebuyers as defined under the California Housing Finance Agency To the extent permitted by law, preference shall be given to those who currently live, work, or previously lived in the City of Fremont;
- To insure long-term affordability, and to assist the greatest number of families over the longest feasible time, BMR units shall be subject to resale restrictions under individual agreements developed by the City of Fremont, which shall be binding for a minimum of 30 years, renewable upon resale;
- The BMR sales price shall be computed as follows:
For a two bedroom unit, the sales price shall be computed based upon the) maximum program restricted income for a family of three times a multiplier of 3.5, and for a three bedroom unit, the sales price shall be computed based upon the maximum program restricted income for a family of four times a multiplier of 3.5. For January 2005, the sales prices are:

2005 BMR sales price:

2 bedrooms (family of 3 at 110% of area median income): \$284,900

3 bedrooms (family of 4 at 110% of area median income): \$316,400

4 bedrooms (family of 5 at 110% of area median income): \$341,950

The City of Fremont Office of Housing and Redevelopment will conduct the Buyer Selection process and will provide eligible homebuyers to the Developer. The selection process will be described in the BMR Master Developer Agreement.

- A-6 The mitigations measures below shall be implemented at pre-, during-, and/or post-construction intervals, as listed below.

Mitigation #1: *The project shall comply with standard dust suppression measures. Dust generated on the project site shall be controlled by watering all exposed areas at least twice daily during excavation, and especially during clearing and grading operations. Additional watering on windy or hot days is required to reduce dust emissions. Cover stockpiles of sand, soil and similar materials with a tarp. Cover trucks hauling dirt or debris to avoid spillage. In areas where construction is delayed for an extended period of time, the ground shall be re-vegetated to minimize the generation of dust. A person shall be designated to oversee the implementation of dust control. This mitigation shall be implemented during construction.*

Mitigation #2: *A site investigation is required to be completed, before the issuance of a grading permit, by a qualified wildlife biologist to determine the presence of burrowing owls or any endangered, threatened or rare wildlife habitat. An additional investigation would be required thirty days prior to the commencement of any site grading or clean-up. This mitigation shall be implemented pre-construction, prior to grading or site work.*

Mitigation #3: *Should any human remains or historical or unique archaeological resources be discovered during site development work, the provisions of CEQA Guidelines, Section 15064.5. (e) and (f) would be followed to reduce impacts to a non-significant level. This mitigation shall be implemented during construction.*

Mitigation #4: Project construction would be required to adhere to appropriate standards for residential and circulation areas with attendant drainage and landscaping, emphasizing storm water Best Management Practices intended to achieve compliance with the Federal National Pollutant Discharge Elimination System (NPDES) program established by the Clean Water Act. This mitigation shall be implemented during and post-construction.

Mitigation #5: Best Management Practices elements shall be incorporated into the final site design to mitigate potential storm water, drainage, and water quality impacts for the project site. This mitigation shall be implemented post-construction.

Mitigation #6: Residential development on the site must adhere to the preliminary recommendations of the Wilson, Ihrig & Associates, Inc. noise study for the site. In addition, a final evaluation conducted by a qualified noise professional of the actual implemented noise attenuation devices and techniques is required prior to the issuance of building permits. This mitigation shall be implemented pre-construction, prior to the issuance of building permits.

Mitigation #7: Hours of construction shall be limited to 7 a.m. to 6 p.m. Monday through Friday, and 9 a.m. to 6 p.m. Saturday. No construction shall be permitted on Sundays. This mitigation shall be implemented during construction.

Special Conditions (Must be satisfied on on-going basis and included in the Homeowner's Covenants, Conditions and Restrictions (CC&Rs))

- B-1 A Homeowner's Association shall be formed and shall covenant and be responsible for the maintenance of all commonly owned facilities, including the private street (or private vehicular accessway), which are not maintained by the public utility agency. CC&R's, including these imposed conditions, shall be submitted to the Development Organization (or during the tract map improvement plan review process) for review and approval.
- B-2 The Homeowner's Association shall be required to contract with a professional management firm to handle maintenance operations and collection procedures. Documentation of such contract shall be submitted to the City. All commonly owned facilities shall be maintained in a good and/or appropriately manicured condition.
- B-3 The exterior parking of boats, campers, and trailers on the site are prohibited. In no event shall household storage preclude the parking of vehicles in a garage area, and all parking spaces designated for guest parking shall be restricted for guest usage only.
- B-4 In the interest of aesthetics, uniformity in appearance, safety and security, all garage doors shall be maintained in a closed position, except during entering or exiting movements from the garage.
- B-5 The Homeowner's Association shall be responsible for the maintenance of all common areas. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- B-6 No power equipment, hobby shops, car maintenance (other than emergency work) shall be permitted within the private garage areas where such activities would displace normal use of the garages for day to day parking purposes.
- B-7 The Homeowner's Association is to periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- B-8 The Homeowner's Association shall be responsible for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems are to be cleaned immediately before the commencement of the rainy season (October 15).

- B-9 No exterior additions or modifications to the residential structures, including the addition of pre-manufactured sun rooms and patio covers, shall be permitted.
- B-10 All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets.
- B-11 Garbage, trash or recycling containers shall be suitably concealed in an area dedicated within the garage of each unit, except such features may be placed at curbside on the designated garbage pick-up day.
- B-12 The CC&Rs and information given to prospective buyers shall disclose that the homes are located in an area with existing commercial and religious uses which may generate noise, deliveries and other impacts typical of commercial and religious uses.
- B-13 A provision shall be included in the CC&R's stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligations of the Homeowners Association.
- B-14 All other CC&R special conditions/provisions included as companion conditions within Exhibits 2 and 3.

Prior to Issuance of Building Permits (Required modifications to project design.)

Site Planning Modifications

- C-1 The design of the proposed wall on the northwest side of the project site shall be reviewed for compatibility with the proposed architecture of the project in terms of the materials and color. The wall will be treated with graffiti-resistant paint. The design of this wall will incorporate the ledge stone trim used on the structures. The wood fence ('good neighbor fence on plan') proposed on the north side adjacent to the zero-lot line church building shall be eliminated. Metal trellises, or other effective screening devices, shall be installed on the north side to screen the Church wall, subject to staff approval during the D.O. process.
- C-2 The height and location of the proposed wall and fence shall be reviewed for conformance with the Zoning Ordinance requirements during D.O. review process.
- C-3 All structure setbacks shall conform to Exhibit "A". Minor changes to the structure setbacks may be permitted, subject to the review and approval of the Planning Director or his/her designee during the D.O. review process.
- C-4 All plans (i.e., Exhibits A, B and C) shall be coordinated. The inclusion of the bioswale northwest of the uncovered parking stalls shall be reflected in the final landscape plan proposed. The applicant shall explore the possibility of enlarging the area of the bioswale to increase onsite post-construction stormwater treatment by reducing the landscape/hardscape area flanking Buildings 3 and 5 on its northwest side and/or by reducing the width of the Private Street (or Private Vehicular Accessway) along and adjacent to the uncovered guest parking stalls from 26 feet to 24 feet, or a combination thereof. If proposed, reduction of the Private Street width will be subject to the review and approval of the Fire and Engineering Departments.
- C-5 The construction drawings shall be reviewed by the acoustic consultant to ensure that all of the mitigation measures required are incorporated in the project. A letter from the acoustic consultant to staff shall state that the plan is in compliance with the requirements for noise mitigation, and shall be subject to staff review and approval during the Development Organization review process.
- C-6 Utility lines shall be located so as not to prohibit the placement of landscaping in between garage units.
- C-7 All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project.

- C-8 The applicant shall provide automatic fire extinguishing systems for each residence within the development, subject to the review and approval of the Development Organization review process.
- C-9 The proposed two parking spaces adjacent to the common open space area (courtyard) shall be eliminated. The required van accessible parking space shall be relocated, preferably at the location of the proposed parking at the Dusterberry Way driveway. In its place, the common open space area shall be enlarged, containing more creative space, whether for passive or active use. A minimum open space area of 2,000 square feet must be met.
- C-10 The proposed parking stall immediately adjacent to the Dusterberry Way driveway shall be eliminated in conformance with the 15-foot parking setback standard required from the public right-of-way. In its place, appropriate landscaping, including a large canopy tree shall be proposed.
- C-11 The applicant shall enlarge the area of the common courtyard to the extent practicable. (See additional landscaping modifications.)
- C-12 The applicant shall work with staff during the Development Organization review process to incorporate additional amenities on the site for the future residents or to further enhance the overall quality of the project.
- C-13 All proposed raised and enhanced pedestrian walkways and paseos shall be appropriately aligned and located so as to create a network of uninterrupted connections. The proposed enhanced connections within the private street shall be modified to meet this condition.
- C-13 Compliance with all conditions listed above under "General Conditions" relating to 'pre-construction' mitigation measures (e.g., noise attenuation, stormwater treatment).

Building Design Modifications

- D-1 The applicant shall explore the possibility of including a visually distinctive architectural element(s) at the corner of Building 2. Such vertical architectural element should be designed in keeping with the general design of the proposed project.
- D-2 The project architect shall continue to work with staff to refine details on the proposed building, including proposed elements relating to corbels, brackets, railing and stone veneers.
- D-3 Additional detailing and design changes may be required if found appropriate during staff's Development Organization review of the construction drawings.
- D-4 The applicant shall work with staff to refine the details of fencing, walls, railing on patios and other architectural details during the Development Organization review process.
- D-5 The applicant shall work with staff to minimize the visual impact of garages on the proposed private street (such as trellises, garage door setbacks, textured paving for the driveway, landscaping, etc).

Landscaping/Lighting Plan Modifications

- E-1 The final landscape plan shall be subject to the review and approval of the City's Landscape Architect during the Development Organization review process.
- E-2 The applicant shall be required to replace the existing Privet street trees with new 24-inch box 'Red Sunset' Maple trees (*Acer rubrum*) to enhance and make the streetscape appearance more vibrant. Street trees shall be planted at a maximum distance of 30 foot on-center. Any improvements to the existing right-of-way adjacent to the project site on Dusterberry Way and Hansen Avenue necessary to implement this condition shall be carried out.

- E-3 A landscape plan shall be submitted to the Development Organization for review and approval, indicating full details regarding (1) paving materials and textures of walkways, (2) lighting of walkways and driveways with low intensity non-glare type fixtures, (3) screening of driveways and parking areas, and (4) landscaping of site and parkway areas. As part of the landscape plan, for the park, railroad buffer, promenade and front yards, the applicant shall submit to the Development Organization:
- a. An underground irrigation plan.
 - b. Weed control specifications.
 - c. A lighting plan for the illumination of the building, driveways and parking areas. Type of lighting fixtures, their heights, intensity and direction shall be clearly indicated. A lighting plan for shared open spaces and the private street that provides light from a variety of sources (e.g. pedestrian-scale bollard pathway lighting, appropriately-scaled street light standards) shall be proposed. The lighting plan shall be reviewed to match the lighting intensity and quality to the use for which it is intended, i.e., lighting proposed for the pedestrian paseos will be substantially different from the required lighting of the private street. Lighting which shines directly into dwelling units or adjacent property, or is overly intense and bright, shall be avoided.
 - d. Construction details of raised planters, walkways, paths, benches, walls, fences, trellises, and other architectural features as appropriate.
 - e. Landscape and irrigation plans for the front yards of the single-family detached residences.
- E-4 The plant palette shall reflect and reinforce the selected architectural style of the buildings. A more detailed landscape plan shall be submitted with the Tract Map Improvement Plans.
- E-5 The applicant shall incorporate vegetation, including vines on the proposed wall adjacent to US Post Office parcel, to provide visual relief.
- E-6 The developer shall work with staff on the design of the proposed low profile corner wall or feature.

Payment of City Fees

- F-1 The project shall be subject to all City-wide development impact fees and the Centerville Specific Plan Fee (\$175.00 per acre). These fees may include, but are not limited to, park dedication in-lieu fee, fees for fire protection, park facilities, capital facilities and traffic impact. The fees shall be calculated at the fee rate in effect at the time of building permit issuance.

During Construction Conditions (Conditions that must be satisfied during construction.)

- G-1 A professional engineer, registered in the State of California, shall be retained to prepare the final grading plan. Upon completion of the grading, a letter shall be submitted to the Development Organization that the as-built grading is in compliance with the approved grading plan.
- G-2 Prior to the inspection of the roof sheathing, the project manager or supervising general contractor shall contact the Development Organization at (510) 494-4561 for an interim inspection by Planning Division staff of the structure to ensure that the construction is consistent with the approved architecture and building design.
- G-3 Compliance with all conditions listed above under "General Conditions" relating to 'during construction' mitigation measures (e.g., erosion control, hours of operation).

Final Occupancy Conditions (Must be satisfied prior to occupancy.)

- H-1 A professional engineer registered in the State of California shall be retained to prepare a final grading plan, and upon the completion of the grading submit to the Development Organization a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of staff prior to the issuance of occupancy permits for each structure.
- H-2 The project architect shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural plans, subject to the review and approval of the Development Organization.
- H-3 The project landscape architect shall submit a letter to the City certifying that the on-site and streetscape (ROW) landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the Development Organization.
- H-4 Compliance with all conditions listed above under "General Conditions" relating to 'post-construction' mitigation measures (e.g., erosion control, hours of operation).

Exhibit "2"
PLN2005-00232
(Vesting Tentative Tract Map)
Dusterberry Townhomes at 37010 Dusterberry Way (Portion of 501-0455-022-08)
Planning Commission Hearing October 27,2005

FINDINGS:

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated October 27, 2005, incorporated herein by reference.

- A. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance, because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards permitted under the R-3, Multi-family Residence Zoning District.
- B. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan, because the proposed development conforms to the requirements of the R-3 zoning district as well as the General Plan land use designation of Medium Density Residential (18-23 DU/AC) for the site.
- C. The site is physically suitable for the type and proposed density of the development, because it is consistent with the General Plan and zoning designations for the site.
- D. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because of the design and location (infill) of the development.
- E. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
- F. The design of the subdivision and the type of improvements will not conflict with any easements required for the public at large for utilities or access within the proposed subdivision.

TENETATIVE MAP CONDITIONS OF APPROVAL:

- 1. Approval of this Vesting Tentative Map shall expire 24 months after approval according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act.
- 2. The developer shall replace existing sidewalk, curb, and gutter, along the project public street frontage of Dusterberry Way and Hansen Avenue. The existing curb ramp at the intersection of Dusterberry and Hansen shall be reconstructed to current City standards. The developer shall repair or replace other existing street improvements, including asphalt pavement to the centerline of the street, as determined by the City Engineer, prior to approval of the final map. The extent of street improvements shall be determined by the City Engineer during the review of subdivision improvement plans.
- 3. The proposed private street name is subject to review, modification, and approval by the City prior to final map approval.
- 4. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
- 5. In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, Order R2-2003-0021, NPDES Permit No. CAS0029831, the property owners shall enter into a maintenance agreement for the long-term operation

and maintenance of on-site stormwater treatment measures. The agreement shall run with the land and be recorded at the same time that the final map is recorded.

6. The streetlight plan and joint trench plan shall be submitted by the applicant with the first subdivision plan check for the street improvement plans and final map. The final streetlight plan and joint trench plan shall be completed and approved prior to final map approval.
7. The developer shall request P.G. & E. to commence with the design of the utility underground work for the proposed development after the Planning Commission's approval of Vesting Tentative Tract Map 7599.
8. Precise geometry and location of all driveways shall be subject to approval of the City Engineer.
9. In accordance with Section 66474.9(b) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City of Fremont or its agents, officers, or employees from any claim, action, or proceeding against the City of Fremont or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City of Fremont, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code.
10. The City of Fremont shall promptly notify the applicant of any claim, action, or proceeding to attack, set aside, void, or annul, its approval and shall cooperate fully in the defense thereof.
11. All new utility service connections, including electrical and communications, shall be installed underground within appropriate public service or public utility easements.
12. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water measures for operation and maintenance of the project.
13. The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
14. The developer, at time of initial sale, shall provide to the buyer information on good housekeeping of hazardous products, i.e. proper use and disposal, prohibited discharge practices, etc. Informational materials will be furnished by the City.
15. A home owners association or other mechanism acceptable to the City is to be established, formed, and is to covenant and be responsible for the maintenance of all commonly owned facilities, which are not maintained by the public utility agency. The developer is responsible for maintenance for all facilities during the subdivision warranty period.
16. The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.
17. All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Fremont.
18. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
19. All on-site storm drains are to be cleaned prior to building occupancy and also be cleaned each year immediately before the beginning of the rainy season (October 15). The City Engineer may require additional cleaning.

20. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution.
21. The developer and project civil engineer shall work with staff to incorporate, into the design, additional storm water best management practices (BMPs) to treat storm water runoff before it is discharged into the public storm drain system. Examples of potential storm water BMPs include bio-swales, micro-detention ponds, and permeable pavement. Details of the storm water BMPs shall be included with the preliminary grading plan application.
22. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse units by easement recorded on the final map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details of these easements, including dimensions and descriptions, shall be included on the tentative map. Foundations for townhouse units must be contained within the individual lots.
23. The developer shall dedicate a minimum six-foot wide public service easement along the Dusterberry Way and Hansen Avenue street frontages.

SUBDIVIDER PLEASE NOTE:

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

Exhibit "3"
PLN2005-00232
(Preliminary Grading Plan and Private Street)
Dusterberry Townhomes at 37010 Dusterberry Way (Portion of 501-0455-022-08)
Planning Commission Hearing October 27, 2005

FINDINGS:

The findings below are made on the basis of information contained in the staff report and information from the public hearing to the Planning Commission dated October 27, 2005, incorporated herein by reference:

- (a) The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
- (b) The proposed project described in the application will not result in geologic or topographic instability on or near the site. A peer reviewed geotechnical evaluation of the site will be required prior to the issuance of a building permit.
- (c) The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The applicant is required to submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer.
- (d) The proposed development is not in any special studies zone nor is there evidence of presence of any fault or active slides per official maps issued by the U.S. Geological Survey and the California Division of Mines and Geology.
- (e) The proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.
- (f) The most logical development of the land requires private street access because the physical character of the project is more amenable to the less intense right of way required of a private street.
- (g) The development of the land is well defined because the design of the subdivision and proposed improvements are in conformance with the City of Fremont's applicable codes and policies.

PRELIMINARY GRADING PLAN CONDITIONS OF APPROVAL:

- 1. The project shall conform with staff amended Exhibit "C" (Preliminary Grading Plan), all conditions of approval set forth herein, and all conditions of approval of Vesting Tentative Tract Map 7666 (PLN2005-00232).
- 2. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
- 3. Approval of this Preliminary Grading Plan shall run concurrent with the approval and subsequent extensions of Vesting Tentative Tract Map 7666 (PLN2005-00232). Approval of this Preliminary Grading Plan shall terminate upon the expiration of Vesting Tentative Tract Map 7666.
- 4. A grading permit issued for the project shall be in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.
- 5. The applicant shall provide for a functional system to control erosion and siltation during and after grading subject to review and approval by the City Engineer or Alameda County Flood Control and Water Conservation District. An erosion and sediment control plan shall be included as part of the grading plans.
- 6. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.

7. All cut and fill slopes shall be graded to a maximum slope of three horizontal to one vertical (3:1).
8. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
9. Prior to issuance of a grading permit for land disturbance greater than one acre, the developer is to provide evidence that a Notice of Intent has been filed and with the State of California Water Resources Control Board. Evidence shall include the WDID number assigned by the State. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
10. The applicant shall submit a detailed soils report, including recommendations regarding pavement structural sections, prepared by a qualified soils engineer registered by the State of California.
11. Grading operations shall be in accordance with recommendations contained in the required soils report and shall be supervised by an engineer registered in the State of California to do such work.
12. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
13. The project storm drain design shall be subject to review and approval of both the City Engineer and the Alameda County Flood Control and Water Conservation District. The storm drain design shall incorporate provisions to prevent increased inundation of downstream properties within the 100-year floodplain. Increased inundation includes a rise in the base flood elevations or an increase in the land area within the 100-year floodplain.
14. Minimum drainage slope on lot pads shall be 1.5%.

PRIVATE STREET CONDITIONS:

15. The private streets shall conform with Exhibit "C", attached hereto and made a part hereof and all conditions of approval of Vesting Tentative Map 7666 (Exhibit "C").
16. This Private Street (PLN2005-00232) is being conditionally approved based on the accuracy of the information shown on Exhibit "C" and submitted with the Private Street application. If any of the information is shown to be inaccurate subsequent to approval of the Private Street by the City, such inaccuracy may be cause for invalidating this approval.
17. The private street name shown on Exhibit "C" (Woodbridge Circle) is subject to modification prior to final map approval. If needed, the developer shall work with staff to provide different street names, subject to staff review and approval.
18. A Private Vehicle Access Way (PVAW) and a Public Service Easement (PSE) are to be established over the entire private street right-of-way. The PUE dedication statement on the final map is to recite that the PUE is available for, but not limited to, the installation, access and maintenance of sanitary and storm sewers, water, electrical and communication facilities.
19. Access considerations for the on-site circulation system require space to be reserved for the movement of fire-fighting and emergency vehicles for the protection of both private property and the public. Dedication of emergency vehicle access easements (E.V.A.E.) on the final map over the private street right-of-way will be required. The easement geometry shall be subject to the approval of the City Engineer.
20. Fire hydrants are to be located along the private street as determined by the Fremont Fire Department.

21. Deed restrictions are to be recorded concurrently with the final map to create a mandatory Home Owner's Association or any other mechanism acceptable to the City for those lots with private street frontage which is to covenant and be responsible for the following:
 - a. Maintenance of the facilities in the private street which are not maintained by a public utility agency, except all utility work resulting from backfill failure is to be the responsibility of the Home Owner's Association.
 - b. Payment of the water and private street lighting (maintenance and energy) bills.
 - c. Maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
 - d. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private street is to be done by the utility agency at the expense of the Home Owner's Association. The Home Owner's Association is to be responsible for repainting any fire hydrants along the private street.
22. Each buyer is to sign an acknowledgment that he/she has read the constitution and bylaws of the Home Owner's Association and the conditions, covenants and restrictions applying to the development.
23. Private street grading and drainage shall be done according to public street standards, subject to review and approval by the City Engineer prior to final map approval.
24. Pursuant to FMC Section 8-1522 and 8-3107, the subdivider is to improve prior to final map approval or agree to improve within one year of final map approval, the private street frontage of the map. No permanent improvement work is to commence until improvement plans and profiles have been approved by the City Engineer. Improvements are to be installed to permanent line and grade in accordance with the City's subdivision improvement standards and to the satisfaction of the City Engineer. The minimum improvements which the subdivider is normally required to construct or agree to construct prior to acceptance and approval of the final map by the City are as set forth in the City Development Policy for Private Vehicle Access ways. Improvements to be constructed include:
 - a. Curb and gutter
 - b. Driveways
 - c. Street paving
 - d. Private Street monuments
 - e. Electroliers (wired underground)
 - f. Drainage facilities
 - g. Signs
 - h. Fire hydrants
25. The private street pavement shall be designed on the basis of a traffic index using predicted traffic generation and a thirty-year pavement design life. In no case shall the traffic index be less than 5.5. Asphalt concrete surfacing to be treated with a seal coat of the type and amount required by the City Engineer. Pavement design sections shall be subject to approval of the City Engineer.
26. Safety lighting is to be provided on the private street. Lights shall utilize "vandal resistant" enclosures and shall have sufficient power and spacing to provide an average maintained foot-candle level of 0.12.

27. A signpost, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, is to be installed at or near the private street entrance. The name of the private street is to be place on this sign in clearly legible four-inch letters. The sign is to have painted, in at least one-inch letters, "Private Property. Not dedicated for public use."
28. Approval of Private Street (PLN2005-00232) shall become effective upon final map approval.